Wong Sie Chiau & Ors v Superintendent of Lands & Surveys, Samarahan Division and other appeals

HIGH COURT (KUCHING) — LAND REFERENCE NOS 15–10 OF 2011-I, 15–11 OF 2011-II AND 15–12 OF 2011-III
STEPHEN CHUNG J
18 SEPTEMBER 2012

Land Law — Acquisition of land — Acquisition for public purpose — Assessment of parcels of land — Dissatisfaction over awards granted — Whether awards too low — Comparison of value with other parcels in land — Market value of other parcels of land in same vicinity

Three land references were heard together as Lots 37, 38 and 90 ('the three parcels') of land were situated next to each other, had overlapping registered owners ('the objectors') and were represented and testified by the same counsel and witnesses, respectively. The Minister declared that the three parcels of land together, among other lands, situated at Sungai Entema, Tebedu were required for a public purpose. Notice was given and an inquiry was held by the respondent to determine the value of the land. After the inquiry, the objectors were awarded the sums of: RM89,255 to acquire Lot 37 (RM37,708 per hectare); RM103,662 to acquire Lot 90 (RM50,278 per hectare); and RM79,048 to acquire Lot 38 (RM37,708 per hectare). The objectors were dissatisfied with the sums awarded and hence, the present hearing. It was the objectors' averment that the award was too low and not in accordance with the market value of the land. The objectors' valuer ('PW1') prepared three valuation reports, one for each parcel of the land and used the comparable sale method of valuation to determine the market value of the three parcels of land by comparing the sales of seven parcels of land in the vicinity. Similarly, the valuer for the respondents ('DW1'), prepared a valuation report based on the comparable sale method of valuation to determine the market value of the three parcels of land using 17 sales of land in the vicinity. DW1 testified that five major variables were considered to be relevant in determining the market value of the lands and these were location, accessibility, date of valuation, tenure and surrounding area. DW1 reaffirmed the valuations previously made for and on behalf of the Superintendent which led to the awards which the objectors complained were too low resulting in these land references.

Held, allowing the objections:

(1) In arriving at its decision, the court was supported by the opinions of two assessors assisting the court in these land references. The first assessor was critical of the valuation report of DW1 as lacking in technical details and

not supported by the comparable sales referred to in her report. He referred to the comparable sales which he deemed to be more suitable in terms of size, locality and dates of transactions (see paras 18–19).

(2) The second assessor referred to the valuation report of PW1 which quoted seven comparable sales used in arriving at the fair market value of the subject land. In his opinion, all the quoted sales were relevant. He said that the best sale was the subject land itself ranging from RM7.41 psm to RM9.54 psm in year 1996 to 1998. Besides these, he said that the transactions supported the unit price recorded by the subject land. The second assessor said that for time period factor adjustment, PW1 adopted a rate of 10% pa as explained in his valuation report. In his opinion, the rate adopted was fair and reasonable (see paras 20–21).

[Bahasa Malaysia summary

Tiga rujukan tanah didengar bersama sebagai Lot 37, 38 dan 90 ('ketiga-tiga lot') tanah terletak berhampiran satu sama lain, telah bertindih dengan pemilik-pemilik berdaftar ('pembantah-pembantah') dan diwakili dan diberi keterangan oleh peguam-peguam dan saksi-saksi masing-masing yang sama. Menteri mengisytiharkan bahawa ketiga-tiga lot tanah tersebut bersama, antara tanah-tanah yang lain, yang terletak di Sungai Entema, Tebedu diperlukan untuk tujuan awam. Notis telah diberikan dan siasatan dijalankan oleh responden untuk menentukan nilai tanah. Selepas siasatan, pembantah-pembantah diawardkan sejumlah: RM89,255 untuk mengambil alih Lot 37 (RM37,708 sehektar); RM103,662 untuk mengambil alih Lot 90 (RM50,278 sehektar); dan RM79,048 untuk mengambil alih Lot 38 (RM37,708 sehektar). Pembantah-pembantah tidak berpuas hati dengan jumlah yang diawardkan dan maka, pendengaran ini. Adalah hujahan pembantah-pembantah bahawa award adalah terlalu rendah dan tidak mengikut nilai pasaran tanah tersebut. Penaksir pembantah-pembantah ('PW1') menyediakan tiga laporan penilaian, satu untuk setiap lot tanah tersebut dan menggunakan cara jualan yang sama penilaian untuk menentukan nilai pasaran ketiga-tiga lot tanah tersebut dengan membandingkan jualan tujuh lot tanah dalam kawasan tersebut. Begitu juga, penaksir untuk responden-responden ('DW1'), menyediakan laporan penilaian berdasarkan atas cara jualan yang sama penilaian untuk menentukan nilai pasaran ketiga-tiga lot tanah tersebut menggunakan 17 jualan tanah dalam kawasan tersebut. DW1 memberi keterangan bahawa lima pembolehubah utama dipertimbangkan sebagai relevan dalam menentukan nilai pasaran tanah-tanah tersebut dan ini adalah lokasi, jalan masuk mudah, tarikh penilaian, pemegangan dan kawasan sekeliling. DW1 mengesahkan semula penilaian yang dibuat terdahulu untuk dan bagi pihak penguasa yang membawa kepada award-award yang mana pembantah-pembantah mengadu terlalu rendah mengakibatkan rujukan tanah ini.

Diputuskan, membenarkan bantahan-bantahan:

(1) Dalam mencapai keputusannya, mahkamah disokong oleh pendapat dua

penaksir yang membantu mahkamah dalam rujukan tanah ini. Penaksir pertama adalah kritikal terhadap laporan penilaian DW1 sebagai kurang butir teknikal dan tidak disokong oleh jualan yang sama yang dirujuk di dalam laporannya. Beliau merujuk kepada jualan yang sama yang mana dianggap lebih sesuai dalam maksud saiz, tempat dan tarikh-tarikh transaksi (lihat perenggan 18–19).

(2) Penaksir kedua merujuk kepada laporan penilaian PW1 yang menyebut tujuh jualan yang sama yang digunakan di dalam mencapai nilai pasaran yang adil tanah tersebut. Dalam pandangannya, kesemua jualan yang disebut adalah relevan. Beliau menyatakan bahawa jualan terbaik tanah tersebut antara RM7.41 meter persegi hingga RM9.54 meter persegi pada tahun 1996 hingga 1998. Selain ini, beliau menyatakan bahawa transaksi menyokong harga unit yang direkodkan oleh tanah tersebut. Penaksir kedua menyatakan bahawa untuk pelarasan faktor jangka masa, PW1 mengguna pakai kadar 10% setahun seperti yang dijelaskan di dalam laporan penilaiannya. Dalam pandangannya, kadar yang diguna adalah adil dan munasabah (lihat perenggan 20–21).]

Notes

For cases on acquisition for public purpose, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2117–2120.

Cases referred to

Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal [2012] 1 MLJ 56; [2012] 2 CLJ 165, CA (refd)

Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd [1966] 1 MLJ 243, FC (refd)

Legislation referred to

Sarawak Land Code (Cap 81) ss 47, 48, 51, 56, 60, (1), 61, 62

Khalid bin Abdul Mutalib for the assessor number one.
Terrence Yap Wei Tzen for the assessor number two.
Wong Ho Leng (Wong Ho Leng & Co) for the objectors.
Marjanah bt Adenan (Evy Liana bt Atang with her) (State Legal Counsel, State Attorney General's Chambers, Kuching) for the respondent.

Stephen Chung J:

[1] These three land references were heard together, upon the requests of the parties to save time and costs, because the three parcels of land were situated next to each other, had overlapping registered owners or objectors and because the counsels and witnesses in each of the three land references were the same.

[2] In Land Reference No 15–10 of 2010-I, the registered owners of a parcel of land containing 2.3670 hectares situated at Sungai Entema, Tebedu, Serian described as Lot 37 Kayan Land District were Wong Sie Chiau, Wong Sie Tuong, Wong Sie Chiing and Wong Sie Kah.

[3] In Land Reference No 15–11 of 20201-II, the registered owners of Lot 90 Block 8 Kayan Land District, containing 2.0610 hectares, situated at Sungai Entema, Tebedu were Wong Sie Hua and Siaw Tick Hung.

[4] In Land Reference No 15–12 of 2010-III, the registered owners of Lot 38 Kayan Land District, containing 2.0963 hectares, also situated at Sungai Entema, Tebedu were Lu Toh Heng, Wong Sie Tuong, Wong Sie Chiau, Wong Sie Chiing, Wong Suk Kieng, Wong Nguk Sing, Ngu Wan King, Hii Pik Ting, Wong Chin Hiong, Wong Soi Ting and Puang Liing Miew. Out of the 11 owners, only three ie Wong Sie Tuong, Wong Sie Chiau and Wong Sie Chiing objected to the sufficiency of the compensation in the acquisition of this parcel of land.

[5] The facts showed that by a s 48 notification published in the Sarawak Government Gazette on 12 September 2002, the Minister declared that the above three parcels of land together with other parcels of land situated at Sungai Entema, Tebedu were required for a public purpose ie for the Tebedu Industrial Estate.

[6] Notice was given and an inquiry was held on 31 October 2002 by the superintendent of lands and surveys to determine the value of the land before making an award pursuant to s 51 of the Land Code in the acquisition of the land. After the Inquiry, on 14 April 2003, the following awards were made:

(a) a sum of RM89,255 was paid to acquire Lot 37 ie at RM37,708 per hectare;

(b) a sum of RM103,662 was paid to acquire Lot 90 ie at RM50,278 per hectare; and

(c) a sum of RM79,048 was paid to acquire Lot 38 ie at RM37,708 per hectare.

[7] The compensation had been paid and received by the objectors under protests. The objectors being dissatisfied had referred the awards for the determination of the court pursuant to s 56 of the Land Code. They stated that they did not agree with the award on the ground that it was too low and not in accordance with the market value of the land.

[8] In a land reference under s 56 of the Land Code that the compensation is

inadequate, it is for the objector to prove that the award is inadequate: *Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243. Pursuant to s 60(1), the compensation is to be determined by reference to the market value of the land as at the date of the publication of the s 47 notice and if there is no such s 47 notice, then as at the date of the publication of the s 48 notice. In determining the compensation, the court shall be guided by the provisions of ss 60–62 of the Land Code.

[9] In these land references, each party called only one witness for the hearing ie their respective valuer. PW1, the valuer for the objectors prepared three valuation reports, one for each parcel of the land. He used the comparable sale method of valuation to determine the market value of the three parcels of land by comparing the sales of seven parcels of land in the vicinity ie Lot 90 Block 8, Lot 37, Serian OT 4099, Lot 133, Lot 142, Lot 74 and Lot 38 Kayan Land District. After making adjustments for the size of the land, title conditions, location, topography and date of transaction, he determined the market value of Lots 37 and 38 Kayan Land District at RM140,000 per hectare respectively and at RM158,000 per hectare for Lot 90 Block 8 Kayan Land District.

[10] Similarly, DW1, the valuer for the respondents, prepared a valuation report based on the comparable sale method of valuation to determine the market value of the three parcels of land. She compared 17 sales of land in the vicinity which took place before 12 September 2002. She said there were five major variables which were considered to be relevant in determining the market value of the lands and these were location, accessibility, date of valuation, tenure and surrounding area. She reaffirmed the valuations previously made for and on behalf of the superintendent which led to the awards which the objectors complained were too low resulting in these land references.

[11] In para 13 of her report (p 6 of bundle B), she referred to 25 previous sales taken as comparables which were shown in Plan B. In fact as stated above, she only used 17 comparables which were shown in Plan C and not Plan B. Plan B was the site plan for the three subject lands. Plan C showed the locality of the 17 comparables used in her report and she set out these 17 transactions in a table in Appendix B.

[12] Appendix B showed that the first transaction referred to was in January 1996 which was in respect of the sale of 810/2367ths shares in Lot 37 Kayan Land District for RM60,000 ie at a price of RM7.41 per square metre ('psm'). The second transaction was in January 1997 also in respect of this parcel of land at RM3.46psm. There was another sale involving this parcel of land in January 1997 at RM7.72psm. The last transaction in Appendix B was in July 2002 in respect of Lot 90 Block 8 Kayan Land District at RM6.20psm.

Appendix B showed that the cheapest sale price was in respect of a transaction involving Lot 129 Kayan Land District in February 1999 at RM2.22psm and the highest sale price was a transaction in April 1999 of Serian OT 4099 at RM12.67psm. After making adjustments, DW1 valued Lots 37 and 38 at RM4.50psm. She valued Lot 90 Block 8 at RM6psm.

[13] DW1 justified her valuation at the above given rates because she said the subject lands were second lots and had no road frotage. She said that Lots 37 and 38 were second lots with no direct access to any road whereas Lot 90 was accessible via Bandar Mutiara internal road. She explained that the trend for transactions of land with road frontage was in the range of RM4.67psm to RM6.25psm whereas for land without any road frontage, the trend was from RM3.21psm to RM4.94psm. She said that therefore the value for second lot should be between the highest transaction for a road frontage lot at RM6.25psm and the lowest transaction for an inner lot at RM3.21psm. She explained that the market value for land in the vicinity was declining because with better roads people were by-passing Tebedu and going to Serian and Kuching instead.

[14] It was obvious that DW1 was using sales No 9, 11, 16 and 13 as the comparable sales in making her valuation of the market values of the subject lands. The sale price for the four sales was at RM3.21psm, RM2.22psm, RM2.87psm and RM4.94psm respectively which explained the low valuations made by DW1. Looking at Plan C, these four parcels of land were not really suitable comparables because they were farther from the main road that cut through the area when compared to the subject lands. Plan C showed that there were three transactions in 1997 in respect of land which were also second lots but which were nearer to the road, these were sales No 3, 10 and 6 at the respective sale price of RM8.65psm, RM11.37psm and RM8.65psm. DW1 did not explain why she ignored these three comparables.

[15] In fact the transactions in respect of the subject lands which were carried out between January 1996 and September 1998 would be the best comparables to be used in determining the market values of the subject land. DW1 explained that she did not adopt these transactions as comparables because of the inconsistency of the transaction price for Lots 37 and 38 which she referred to in Appendix D.

[16] The market or the market price for land is not a perfect ten. It is based on what a willing owner is prepared to sell and what a willing buyer is prepared to pay for the land. It, inter alia, depends on their expectations of the value or the market price of the particular parcel of land, the seller's attachment to the land, the purpose for which it is to be used by the buyer, the financial constraints or strengths of both the seller and the buyer, the urgency of the

seller to sell the land, the bargaining power of the seller vis a vis the buyer and any other information affecting the land which one party has and which the other party may not have. These factors would affect the price fluctuations or transaction price of a parcel of land. But the inconsistency of the transaction price as DW1 put it was not a sufficient reason not to consider the three parcels of subject land as the comparables in these land references. PW1 has used the three parcels as suitable comparables in his valuation of the market price. Similarly, the two assessors assisting the court have also used the three parcels as the best comparables in determining the market value.

[17] Using the three parcels as comparables, as stated above, the first transaction in respect of Lot 37 was in January 1996 at RM7.41psm, the second was in January 1997 at RM3.46psm and the third transaction was also in January 1997 at RM7.72psm. In respect of Lot 38, the first transaction was in January 1997 at RM8.59psm, the second in March 1998 at RM6.36psm and the third was in September 1998 at RM9.54psm. There was only one transaction involving Lot 90 which was in April 1997 at RM9.46psm. Another suitable comparable to be used was the sale of Lot 133 in February 1997 at RM8.65psm. Using these comparables, the values were very much higher than the RM4.50psm and RM6psm used by DW1 in her valuation.

[18] I am supported in my determination by the opinions of the two assessors assisting the court in these land references. Assessor number one was critical of the valuation report of DW1 as lacking in technical details and not supported by the comparable sales referred to in her report.

[19] He referred to the following comparable sales which he deemed to be more suitable in terms of size, locality and dates of transactions ie Lot 133 at RM8.65psm, Lot 74 at RM11.37psm, Lot 142 at RM8.65psm, Lot 38 at RM8.59psm to RM9.54psm, Lot 37 at RM7.72psm and Lot 90 at RM9.46psm.

[20] Assessor number two referred to the valuation report of PW1 which quoted seven comparable sales used in arriving at the fair market value of the subject land. In his opinion, all the quoted sales were relevant. He said that the best sale was the subject land itself ranging from RM7.41psm to RM9.54psm in year 1996–1998. Besides these, he said that the transactions in respect of Lots 133 and 142 at RM8.65psm in 1997 supported the unit price recorded by the subject land.

[21] Assessor number two said that for time period factor adjustment, PW1 adopted a rate of 10%pa as explained in his valuation report. In his opinion, the rate adopted was fair and reasonable. He said the rate adopted by PW1 was

A further supported by sale no 11 and sale no 16 in DW1's report. The difference in unit value between these two sales was 30% for a period of three years which was equivalent to 10%pa.

B **[22]** Both assessors came to the same valuation for the three parcels of land as follows:

Subject Property	Land Size (ha)	Unit Value (RM/ha)	Market Value (RM)
Lot 37 Kayan Land District	2.367	140,000	331,380
C Lot 38 Kayan Land District	2.0963	140,000	293,482
Lot 90 Block 8 Kayan Land District	2.061	158,000	325,638

D **[23]** The above valuations by both assessors supported the valuation of PW1 ie the objectors' valuer which showed that the compensation paid to the objectors for acquiring the three parcels of land were inadequate. In a land reference, heard by a High Court judge sitting with two assessors to determine the fair and reasonable amount of compensation payable arising from an acquisition, the High Court judge should adopt the opinion of the assessors if E they both agree and support the opinion of the court: see *Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal* [2012] 1 MLJ 56; [2012] 2 CLJ 165.

F **[24]** For the reasons given, the following compensation shall be paid to the objectors:

(a) Lot 37 Kayan Land District RM331,380
(b) Lot 38 Kayan Land District RM293,482
G (c) Lot 90 Block 8 Kayan Land District RM325,638

(Less the sums previously already paid to them)

The superintendent shall pay the costs for the land references if not agree to be taxed.

H **[25]** The assessor shall each be paid RM100 per day for their attendance in court.

Objections allowed.

I Reported by Afiq Mohamad Noor